

Breaking Down the DWI

Arrest

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According to MADD & NHTSA

- Impaired driving will affect one in three Americans during their lifetime
 - Every 2 minutes someone is injured by an impaired driver
 - Every 50 minutes someone is killed by an impaired driver.
 - Each year, alcohol-related crashes in the United States cost about \$51 billion
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Driving While Intoxicated is a Crime



The Impaired Driver Problem

- DWI is the nation's most frequently committed violent crime; Impaired Driving is no accident.
 - Alcohol is the state's leading cause of traffic deaths.
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What is a DWI?

Louisiana law prohibits operating a motor vehicle when: (LSA R.S. 14:98)

- (a) The operator **is under the influence of alcoholic beverages**; or
 - (b) The operator's **blood alcohol concentration is 0.08 percent or more**; or
 - (c) The operator is **under the influence of any controlled substance** (illegal or prescription drug(s)); or
 - (d) The operator is **under the influence of a combination of alcohol and one or more drugs** which are not controlled dangerous substances (obtainable with or without a prescription); or
 - (e) The operator is under the influence of one or more drugs which are not controlled dangerous substances (obtainable with or without a prescription).
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Elements of DWI Case

- Identify defendant
 - As operator
 - Of motorized vehicle
 - While impaired (alcohol and/or drugs)
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Operation

What is operation?



- The term “operating” is broader than the term “driving”. State v. Rossi, 734 So.2d 102, 98-1253 (La.App. 5 Cir. 4/14/99).
- A person may successfully operate a vehicle without driving it.

What is Operation?

- Was the engine on? What gear was the vehicle in? Where was the driver's foot, gas or brake?

What is operation?

- The term “operating” is broader than the term “driving”.
- A person may successfully operate a vehicle without driving it.
- The courts have held that a person may be convicted of operating a motor vehicle while intoxicated without it necessarily being shown that the automobile was actually in motion or even had the engine running.
- To “operate” is not limited to a state of motion, but also includes, under the management theory, stops and parking on the highway as a necessary incident to operation.

Impairment

If only they were all this easy!!!!



Impairment/Intoxication

- What is impairment?

Generally impairment may be considered as a diminished ability to perform mental as well as motor tasks in an efficient and coordinated manner. Such diminished function could be exhibited in a person as slowed reaction time, confusion in tasks requiring divided attention, and uncoordinated eye and hand movements.

Impairment/Intoxication

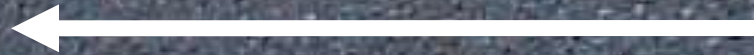
- Under Louisiana Law:

“[a] person is intoxicated within the provisions of the statute when he does not have the normal use of his physical and mental faculties by reason of the use of alcoholic beverages (or narcotics), thus rendering such person incapable of operating an automobile in a manner in which an ordinarily prudent and cautious man in full possession of his faculties, using reasonable care, would operate a motor vehicle under like conditions. **State v. Hightower**, 238 La. 876, 116 So.2d 699 (LA 1960).

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**Louisiana Legal
Limit**



Alcohol induced impairment affects four major driving functions:

1. Steering Control

2. Velocity Control (Speed)

3. Time Sharing of Attention

4. Information Processing

Steering Control

Studies show vehicle heading deviations are greater and more frequent than for sober drivers

– Mortimer and Sturgis (1975)

Alcohol significantly impairs steering control

– Jex & Associates (1974)

Based on studies, the following cues are useful in detection:

Weaving – path deviations and corrections

Drifting – A gradual straight line deviation

Swerving – Abrupt change heading to return to original path

Straddling – A land marker or centerline

Driving on lane markers

Velocity Control (Speed)

Studies show, alcohol effects the control of vehicle velocity, including vehicle starting and stopping

Heimstra and Struckman (1973)

Significant correlations occur between alcohol level and vehicle velocity control while using laboratory driving simulators

Sugarman & Associates (1973)

Based on studies, the following cues are useful in detection:

Stopping abruptly

Stopping in an inappropriate location

Accelerating or decelerating rapidly

Braking erratically

Almost striking objects or vehicles

Time Sharing of Attention

Alcohol degrades the ability of drivers to shift attention from one stimulus to another.

- Moskowitz, Ziedman & Sharma (1976)

Drivers with .05 BAC were found to fixate on stimuli in the driving environment for longer periods of time ... and spent significantly more time looking at the road straight ahead.

- Kobayashi (1975)

Based on studies, the following cues are useful in detection:

Driving without headlights on

Failing to respond to traffic signals or signs

Signaling inconsistent with driving actions

Almost striking stationary objects

Information Processing

Intoxicated drivers require more time to comprehend unexpected situations. - Moskowitz & Murray (1975)

Based on studies, the following cues are useful in detection:

Driving into opposing/crossing traffic

Slow speed

Driving on other than designated roadway

Slow response to traffic signals

Turning inappropriately or illegally

Stopping (without cause) in the lane of traffic

Almost striking another moving vehicle or stationary object

How Can Drugs Impair Driving?

- Drugs may affect normal behavior by impairing human performance, such as cognition or psychomotor skills:
 - ***Coordination***
 - ***Judgment / Decision-making***
 - ***Perception***
 - ***Tracking***
 - ***Reaction Time***
 - ***Divided Attention and Multitasking***
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SFSTS

What is the purpose of the SFSTs?

- SFSTs mirror the *divided attention skills* necessary to operate a car and examine whether the divided attention skills of the defendant were impaired to a point to affect his driving ability.
 - SFSTs test whether a person can do two things at the same time—two tasks much simpler than driving. If not, how can that person engage safely in the much more complex task of driving?
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What is the purpose of the SFSTs?

- The Standardized Field Sobriety Tests (SFSTs) consists of a series of three tests, which, when properly administered and interpreted, are highly reliable tools for evaluating a suspect's degree of impairment due to alcohol and/or drugs.
 - They assist the officer in establishing probable cause for arrest and removing the impaired driver from the road.
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HGN

- While conducting the test, the officer looks for six "clues," three in each eye, that indicate impairment.
- Lack of Smooth Pursuit
- Distinct Nystagmus at Maximum Deviation
- Nystagmus Onset Prior to 45 Degrees

Walk and Turn Test

- 1. Can't balance during instructions
- 2. Starts too soon
- 3. Stops while walking to steady themselves
- 4. Does not touch heel-to-toe
- 5. Steps off the line
- 6. Uses arms to balance
- 7. Takes the wrong number of steps
- 8. Loses balance while turning or turns incorrectly



One-Leg Stand Test

1. Sways while balancing
2. Uses the arms for balance
3. Hops during the test
4. Puts the foot down



Impaired

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graph TD; A((Impaired)) --- B[Defendant Fell Asleep after Breath Test]; A --- C[Observed Weaving on Clearview Parkway]; A --- D[Defendant was Speeding]; A --- E[Slow Reaction when Stopped]; A --- F[Horizontal Gaze Nystagmus]; A --- G[Defendant's Speech was Slurred]; A --- H[Unable to Follow Instructions]; A --- I[Poor Balance on SFSTs]; A --- J[Admitted to Feeling the Effects]; A --- K[Experienced Mood Swings]
```

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Implied consent

Implied Consent– LSA R.S. 32:661

- Under Louisiana law, every person who obtains a driver's license or who operates a motor vehicle on the public highways of this state gives consent to test(s) of blood, breath or urine for the purpose of determining if they are under the influence of an alcoholic beverage, any abused substance or a controlled dangerous substance.
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- Although every driver is deemed to give their consent to the test(s), the legislature allows the driver to refuse to submit (meaning, withdraw their consent) after being advised of the consequences of such refusal under La. R.S. 32:661C.
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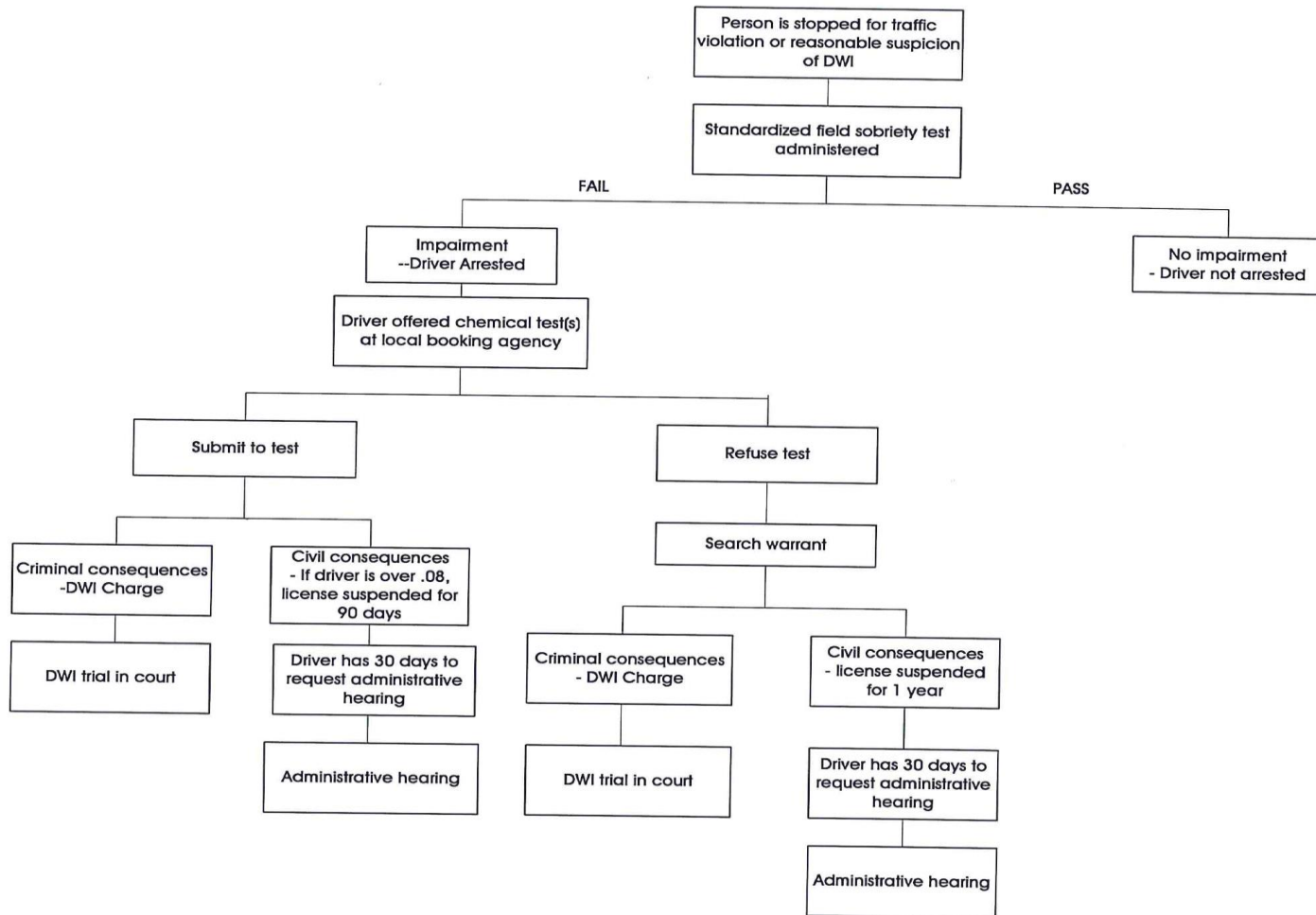
Consequences for Refusal of Test

- Your Louisiana driver license (or your ability to drive in Louisiana if you do not have a valid Louisiana license) may be suspended in the implied consent proceeding for 90 days or more for failing the chemical test or 1 year or more for refusing a chemical (breath / blood / urine) test.
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Right to Refuse Chemical Test

- A person under arrest for DWI may refuse to submit to a chemical test except:
 - Where a fatality has occurred or a person has sustained serious bodily injury [La. R.S. 32:666(A)(1)(a)(i)] This section requires probable cause.
 - The person has refused a chemical test on two previous occasions [La. R.S. 32:666(A)(1)(a)(i)] [if this applies then suspect can be charged with 14:98.2]
 - Where a fatality has occurred [La. R.S. 32:681(A)] This statute does not require probable cause.

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- *The implied consent suspension proceeding **and** the criminal DWI case are completely separate from one another.*
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Why do offenders refuse the test?

- Many DWI offenders refuse to submit to the breath test to avoid or reduce criminal sanctions for conviction of DWI; instead, they hope to receive a minor administrative license suspension for their criminal and dangerous behavior, rather than sanctions appropriate with a criminal DWI conviction.
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Search Warrant

No Refusal Initiatives in Louisiana

- Law enforcement officers have looked at new ways to combat the DWI problem.
 - Under this initiative, officers seek search warrants when suspected DWI offenders decline a chemical test. If the officer demonstrates sufficient probable cause of DWI, the judge will issue a warrant authorizing the withdrawal of the suspect's blood.
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LSA-Cr.P. Art. 163.1

**Search of a person for bodily samples;
warrants; execution**

A. A judge may issue a search warrant authorizing the search of a person for bodily samples to obtain deoxyribonucleic acid (DNA) or other bodily samples.

B. The warrant may be executed any place the person is found and shall be directed to any peace officer who shall obtain and distribute the bodily samples as directed in the warrant.

C. A warrant authorizing the search of a person for bodily samples remains in effect for one hundred eighty days after its issuance.

**LSA-Cr.P. Art. 162.1 Warrant issued
upon oral testimony**

- A. In addition to the provisions of Article 162, a search warrant may issue only upon probable cause established to the satisfaction of the judge by the sworn oral testimony of a credible person reciting facts establishing the cause for issuance of the warrant.**
 - B. The sworn oral testimony may be communicated to the judge, and the oath may be administered by the judge, by telephone, radio, or such other electronic method of communication deemed appropriate by the judge...**
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LSA-Cr.P. Art. 162.1 Warrant issued upon oral testimony

D. The testimony may also be communicated to the judge by facsimile transmission signed by the applicant, after the administration of the oath by the judge by telephone, radio, or such other electronic method of communication deemed appropriate by the judge. The judge shall certify on the facsimile transmission the date and time of the administration of the oath. If the judge determines that the warrant should issue, he shall affix his signature to the warrant which the applicant has prepared and forwarded to him by facsimile transmission. The judge shall transmit to the applicant, by facsimile transmission, the warrant which he has executed together with the written testimony and certification of oath. The original application for the warrant with the applicant's signature and the facsimile copy with the original signature of the judge shall be preserved in the same manner as an original warrant signed by both the applicant and the judge.

LSA-Cr.P. Art. 161 Property subject to seizure

- A. Except as authorized by Article 163.1, a judge may issue a warrant authorizing the search for and seizure of any thing within the territorial jurisdiction of the court which:
- (1) Has been the subject of theft.
 - (2) Is intended for use or has been used as a means of committing an offense.
 - (3) May constitute evidence tending to prove the commission of an offense.**
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Conviction of DWI & DL Suspension

- If you are ***convicted*** of the **DWI charge**, you will also lose your license (or your right to drive in Louisiana if you don't have a valid Louisiana license) for 1 year or more. This suspension is separate and distinct from the suspension received for failing or refusing a breath, blood, or urine test.
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PENALTIES

DWI 1st Offense (*Misdemeanor*)

- **Fine:** \$300-\$1,000 (plus court costs and other fees)
 - **License Suspension:** 1 year
 - **Jail: 10 days to 6 months.** All can be suspended if:
 - Community Service: 32 hours
 - Substance Abuse Program
 - Driver Improvement Program and
 - Probation
 - **If BAC over 0.15:** Minimum mandatory 48 hours jail.
 - **If BAC over 0.20:** Minimum mandatory 48 hours jail.
License suspended for 2 years and fine \$750-\$1,000
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DWI 2nd Offense (*Misdemeanor*)

- **Fine:** \$750-\$1,000 (*plus court costs and other fees*)
 - **Jail:** 30 days to 6 months. *48 hours cannot be suspended and remainder :*
 - Community Service: 240 hours
 - Substance Abuse Program
 - Driver Improvement Program and
 - **Driver's License Suspension:** 2 years
 - **Probation with ignition interlock device**
 - **BAC .15 or more:** Minimum mandatory 96 hours in jail.
 - **BAC .20 or more:** Minimum mandatory 96 hours in jail. License suspended for 4 years and fine \$1,000
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DWI 2nd when arrest occurs within one year of 1st arrest (*Misdemeanor*)

- 30 days of the sentence without benefits; plus other sentencing requirement under 14:98.2(A)
 - .200%g or greater
 - 30 days without benefits
 - Fine \$1000
 - License suspended for 4 years
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DWI Second Offense when the prior conviction is for Vehicular Homicide or First Degree Vehicular Injuring (*Felony*)

- **Fine:** \$2,000 (*plus court costs and other fees*)
 - **Jail:** 1 -5 years (*all but 6 months can be suspended*)
 - **Community Service:** 240 hours
 - **Substance Abuse Program**
 - **Driver Improvement Program**
 - **Probation with ignition interlock device & Home incarceration (Min of 6 months)**
 - **Driver's License Suspension:** 2 years
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DWI 3rd Offense (*Felony*)

- **Fine:** Mandatory \$2,000 (plus court costs and other fees)
 - **Jail:** 1 to 5 years. All but 1 year can be suspended if:
 - Community Service: 240 hours
 - Substance Abuse Evaluation
 - Inpatient/outpatient Substance Abuse Treatment
 - Driver Improvement Program
 - Home incarceration (minimum of six months) and
 - Probation for remainder of sentence
 - **Vehicle confiscation**
 - **Driver's License Suspension:** 3 years
 - **Ignition interlock required**
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DWI 3rd Offense if Previously received Benefits or HIP, DWI/Drug Court or Substance Abuse

- Jail 2 - 5 years with or without hard labor (2 years without benefits); plus other sentencing requirement under 14:98.3(A)
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DWI 4th Offense (*Felony*)

- **Fine:** Mandatory \$5,000 (plus court costs and other fees)
 - **Jail:** 10 to 30 years. All but 2 year can be suspended if:
 - Community Service: 320 hours
 - Substance Abuse Evaluation
 - Inpatient/outpatient Substance Abuse Treatment
 - Driver Improvement Program
 - Home incarceration for length of probation and
 - Probation not to exceed 5 years
 - **Vehicle confiscation**
 - **Driver's License Suspension:** 3 years
 - **Ignition interlock required**
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DWI 4th Offense if Previously participated in Drug/DWI Court *(Felony)*

- Jail 10 - 30 years with or without hard labor (3 years without benefits); plus other sentencing requirement under 14:98.4(A)
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DWI 4th Offense if Previously received HIP or Substance Abuse Treatment

- Jail 10 - 30 years at hard labor (3 years without benefits); plus other sentencing requirement under 14:98.4(A)
-

DWI 4th Offense if Previously received Benefits of Sentence

- Fine \$5,000
 - License suspended for 3 years
 - Jail 10 - 30 years at hard labor (no part of the sentence may be imposed with benefits and no portion of the sentence shall be imposed concurrently with the balance of any sentence.)
 - Vehicle confiscation
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Child Endangerment Law

- If a child 12 years of age or younger was a passenger in the vehicle at the time of the commission of the offense, the minimum mandatory sentence provided for each offense cannot be suspended.
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If **Child Endangerment Law** applies, the minimum mandatory sentences would be as follows:

- **DWI First Offense:** 10 days in jail
 - **DWI Second Offense:** 30 days in jail
 - **DWI Third Offense:** 1 year in jail
 - **DWI Fourth Offense:** 10 years in jail
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Ignition Interlock



Ignition Interlock

- An ignition interlock device is an alcohol breath screening device that is connected to the vehicle's ignition system to prevent the vehicle from starting if it detects a blood alcohol level above a preset limit.
 - An interlock may be required to be installed in a vehicle prior to the reinstatement of driving privileges as a condition of the reinstatement of your driver's license.
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SR-22 Insurance

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- You must file and maintain proof of future financial responsibility for three years from the date of a DWI conviction.
 - If you refused to submit to a chemical test, you will be required to file proof of future financial responsibility by submitting an SR-22 before your license can be reinstated.
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What is an SR-22?

- An SR-22 is a form from a Louisiana licensed insurance company certifying that you have purchased liability insurance that meets the minimum required coverage limits.
 - The SR-22 provides proof to the Louisiana Office of Motor Vehicles that you are adequately insured. If you cancel your insurance or the insurance company cancels your policy before SR-22 requirement period is over, the company must notify the OMV that the certificate is canceled.
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Prior Convictions

Prior Convictions

- Prior convictions may be used to convert a DWI into a second, third or fourth offense include a conviction for vehicular homicide, vehicular negligent injuring, first degree vehicular negligent injuring or a conviction for DWI in any state, municipal or other court.
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Prior convictions

- A conviction includes - a verdict of guilty after a trial, a plea of guilty or a plea of nolo contendere.
 - A conviction also includes a prior offense that was dismissed under **Louisiana Code of Criminal Procedure Article 894.**
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Cleansing Period

- Louisiana has a 10 year "*cleansing period*" for DWI offenses. This means that if the arrest for the prior offense occurred over 10 years before the arrest for the current offense, that prior conviction cannot be used to convert the present DWI offense to a higher offense.
 - However, any periods of time that the defendant is incarcerated, has been attached for failure to appear, is awaiting trial or on probation for an impaired driving offense shall be excluded in computing the ten year period.
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Other DWI Related offenses

UNDERAGE DWI

- In Louisiana, it is a crime (*LA. R. S. 14:98.6*) for a person under the age of 21 to operate a motor vehicle with a blood alcohol concentration of .02 g% or more.
 - Any person under the age of 21 who has a blood alcohol concentration of .08 g % or more is to be charged under the "*regular*" DWI statute (*14:98*).
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Underage DWI 1st Offense (*Misdemeanor*)

- Fine \$100-\$250.00
 - License suspended for 1 year
 - Jail 10 days - 3 months - can be suspended if:
 - Probation, plus
 - 32 hours of CSW
 - Driver Improvement Program and
 - Substance Abuse Program
 - court may require ignition interlock device during probation
-

Underage DWI 2nd Offense

(Misdemeanor)

- Fine \$250-\$500
 - License suspended for 2 years
 - Jail 30 days - 6 months - - can be suspended if placed on probation and:
 - Serve 48 hours in jail without benefits, plus
 - Driver Improvement Program and
 - Substance Abuse Programor
 - 80 hours of CSW
 - Driver Improvement Program and
 - Substance Abuse Program
 - Court may require ignition interlock device during probation
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Unlawful Refusal to submit to Chemical Test (LSA R.S. 14:98.7), Misdemeanor

- It is a crime to refuse to submit to a chemical test required by a law enforcement officer after two refusals.
 - The defendant shall be subject to the same penalties which are imposed for a first offense violation of driving while intoxicated.
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Unlawful Refusal to submit to Chemical Test

- Fine \$300 - \$1,000
 - Jail 10 days - 6 months - can be suspended if placed on probation and:
 - serve two (2) days in jail, plus
 - Driver Improvement Program and
 - Substance Abuse Programor
 - 32 hours of CSW, plus
 - Driver Improvement Program and
 - Substance Abuse Program
-

Operating a Vehicle while under DL Suspension (LSA R.S. 14:98.8)

- It is a crime to operate a vehicle while under suspension for certain prior DWI offenses or refusal to submit to test.
- **Jail: 15 days to 6 months** without benefit of suspension or execution of sentence.
- **Jail 60 days - 6 months** (sentence cannot be suspended when the operator's driving privileges were suspended for manslaughter, vehicular homicide or negligent homicide resulting from the operation of a motor vehicle.)

Questions ???????

Thank you!

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